YEARBOOK OF EUROPEAN UNION AND COMPARATIVE LAW-YEUCL
Vol.3, 2024 Article 24

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DOI:10.5281/zenodo.14063096

Recommended Citation

Zwang, W. (2024). Regulation n. 2024/1351: another important step in EU immigration policy regarding asylum seekers for family unity. *Yearbook of European Union and Comparative Law, vol. 3,* 1104-1134, Article 24

Available at:
https://yeucl.free.nf/index.php/yeucl/issue/current

Regulation n. 2024/1351: another important step in EU immigration policy regarding asylum seekers for family unity

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Abstract: The present paper aims to highlight the novelties that the Regulation n. 2024/1351 has brought in the immigration sector. It is a new milestone, within the Union, for asylum seekers, for family unity and family reunification. Novelty or not will be the practice and the near future that will allow us to arrive at the relative answers. Respect for the nascent values of the Union as well as the criticisms of the past in the immigration sector is a reality. In other words, the harmonization and integration of the European policy for immigration and migratory flows is a mature reality that always deserves attention in the steps that follow.

Keywords: Regulation 2024/1351; immigration and asylum policy; asylum forum shopping; protection of asylum seekers;

international protection; Dublin III; European Union law; European immigration protection; family unity; family reunification; best interest of child; European integration.

Introduction

The stages for the harmonization, integration of immigration law and especially for asylum in the European context are now a reality that has been going on for years showing the anxiety of the European Union to help such a sensitive and constantly evolving policy. The new pact for immigration and asylum, the Regulation n. 2024/1351[1] characterized as a regulation of management for asylum and as a consequence also of immigration also allows itself to be named as a management regulation (Peers, 2024)[2], since it seeks to regulate and attract attention for further investigation relating to the migration policy of the Union, concerning the criteria for determining a Member State that has the competence to receive and manage the application for international protection according to the principle of solidarity (Moraru, 2021; Maiani, 2022).

The solution of the main problems has to do with the

1The Council adopts the EU's pact on migration and asylum: https://www.consilium.europa.eu/en/press/press-releases/2024/05/14/the-council-adopts-the-eu-s-pact-on-migration-and-asylum/

2Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013. PE/21/2024/REV/1, OJ L, 2024/1351, 22.5.2024: https://eur-lex.europa.eu/eli/reg/2024/1351/oj

management of continuous migratory flows that often do not have a precise legal basis. The expectations in front of a migratory policy is now full of problems, since the previous stages have not definitively resolved the emerging issues of the time and especially that of reception.

The criterion of the state of first arrival is related to the evaluation of the requests for international protection and reception of migrants as well as with the system of solidarity that requires states to face, compare the pressures of migratory flows.

Member States have wide margins of discretion regarding the management and functioning of asylum systems at national level. Regulation No. 2024/1351, which will enter into force on 1 July 2026, has repealed the previous Regulation No. 604/2013, namely the Dublin III Regulation, which identified the state, which is competent for examining the application for asylum, i.e. it has defined a solidarity mechanism inspired by European but also international solidarity rules.

The new regulation considers the principle of solidarity as a procedural process (De Bruycker, 2023; Peerboom, 2023; De Bruycker, 2024; Peers, 2024), that seeks to highlight sponsored returns as key measures in support of the Union (Sundberg Diez, Trauner, De Somer, 2021), in the migration sector. In other words, it is a package of tools aimed at managing the migration

issue at a European level. The principle of solidarity through preparatory acts has a procedural nature. It presents through a comprehensive vision the needs of the Member States regarding the continuous migration crises that present themselves with various faces. Migratory pressure is regulated as a container that equally covers the development of policies in a fair and responsible way.

The need for further integration, in the sector in question, has been based on the principles of loyal cooperation and the application of procedural rules. The legislation in question manages, respects and is consistent with an external and internal component of asylum and migration. The points of investigation and the questions are many given that despite the fact that the years are ripe and the commitment of the EU has been constant and precise for years, we have arrived in 2024 to still talk about a lack of clarification in partnerships with third countries, in the practice of externalization of the related border controls and in the related protection of migrants' rights (Garcìa Andrade, 2020).

The old Dublin III regulation had highlighted some interesting principles for the international protection of asylum seekers based on the criteria of fairness and objectivity. Certainty and speed continue to constitute the various procedures that safeguard the state that identifies competently and that also takes

effectively for the asylum seeker, the formal process, provided by the old regulation, that recognizes the protection of the immigrant. Respect for the principle of subsidiarity, legal paths and conditions for the repatriation of citizens of third countries are some of the objectives that also the old regulation addressed. Regular migration fights trafficking and flows from irregular migrants as well as human trafficking. The trust of citizens of third countries in the Member States of the Union is also affirmed by recital 36 of the same regulation: "are considered safe states for citizens of third countries". In this way, the old regulation asks the governments of the member countries to manage, control and above all protect human lives.

The new regulation, based on solidarity and fair distribution of responsibility, avoids further protection in the area that observes fundamental rights, in the principles that are protected by the rights of the Union as well as at the international level and the related jurisprudence of super partes courts. Already, the recital n. 36, which refers to the status of refugees of 28 July 1951 (Zimmermann, Do Schner, Machts, 2011) and has integrated the protocol of New York of 31 January 1967 tried to avoid a country that risks with exposed manner the persecution and the principle of non-refoulement.

Finally, we must say that the new regulation has highlighted the criterion of the state suitable for achieving family reunification.

The regulation allows to identify as competent the state in which the family members of the applicant who benefit from the relative international protection reside. As an alternative, we also have the holders of long-term residence who are authorized to reside in a state as beneficiaries of international protection who have thus become citizens.

What are the general characteristics that determine the competent state?

A broad and precise mechanism of continuity that determines the competent state to follow the spirit and legal practice of the previous Dublin III regulation is already noted in recital no. 76 of the new regulation that puts in order and in practice a broad revision of a system that overcomes the criticisms of the past. It was the institutions of the Union that chose not to follow a path of modification of the Dublin system except for some variables that are reinserted for asylum seekers in the Member State of first entry and regular residence.

The countries highlight the external borders of the Union that are protagonists of migratory flows. The countries have long been subjected to pressure, especially economic, to continue to deal with migratory flows and the related damage to a level of protection of their rights. The complaints are related to a not so effective treatment with regard to reception centers, detentions

that are long-term and establishment, the total lack of legal assistance and the precariousness of lives of foreign people.

The rules of establishment concern each Member State that is competent for the protection of foreign persons requesting and having the relevant status. This is a topic that for the Union also includes the denial of international protection as well as the terms relating to the freedom of residence in a Member State of the Union. Part III of the regulation n. 2024/1351 defines the mechanisms of a competent state.

Legal certainty and the provisions reaffirm the principle of competence for migration policy that actually limits the fear of governments regarding asylum shopping but also secondary movements for applicants for international protection as well as the hypothesis for Member States not to continue to be responsible for the applications of asylum seekers in orbit.

Already Art. 38 of the regulation states:

"(…) an application for international protection is registered for the first time or, where applicable, the Member State of relocation shall immediately initiate the procedure for determining the Member State responsible (...)"[3],

in combination with art. 24, par. 2 it establishes the basis of an existing situation of the relative registration. This mechanism assesses in a practical way the needs of migrants who do not

3CJEU, 4 October 2018, C-56/17, Fathi, ECLI:EU:C:2018:803, published in the electronic reports of the cases, par. 56: "(...) the authorities of a Member State may proceed to examine the merits of an application for international protection, even in the absence of an explicit decision by those authorities (...) on the basis of the criteria laid down in the Dublin Regulation, that the responsibility for carrying out such an examination lay with that Member State (...)"

know the language of the country who present themselves and who initiate the relative procedure to be followed for their permanent entry. This mechanism is based on objective criteria that are the object of choice by the applicant[4]. The criteria with a hierarchical way find application to considerations that are based on the family nature and the relative possession of a visa, a residence permit and the qualification of an educational institution with a seat in their own Member State.

What are the criteria?

When we talk about criteria we are referring to the objectives that each act of the EU highlights. The regulation 2024/1351 has the objective of achieving family reunification by giving greater weight to family unity, family reunification and the related discipline of the competent state that gives priority to asylum seekers in Member States who reside with first, second degree family members[5]. Migration trends and applicants who arrive on the territory of one of the Member States after a period of transit make use of the notion of family member. The term "family" is understood in a strict way as in the past. Therefore, there are no novelties in this sector. Thus, the family is constituted by the country of origin according to art. 2, letter g), Dublin III

4CJEU, 7 March 2017, C-638/16 PPU, X and X, ECLI:EU:C:2017:73, published in the electronic reports of the cases, par. 48.

5CJEU, 2 April 2019, joined cases C-582/17 and C-583/17, H and R, ECLI:EU:C:2019:280, published in the electronic reports of the cases, par. 83.

regulation.

The same definition is also followed by Art. 2, par. 8 of the new regulation n. 2024/1351. Thus, the two regulations in parallel have inserted among the family members the codification of the jurisprudence that has recognized their belonging to their family nucleus[6].

The verification of the relative family ties for the Member State that requests the relative DNA of the applicant are elements of proof that allow the relative reunification, more streamlined in time from the previous Dublin III regulation. The formal evidence, the documents that justify and above all the DNA tests are not necessary as evidence of a secondary nature, that is circumstantial and in a coherent manner seek to verify and detail in an established manner the competence for the relative examination of an application relating to international protection.

Family relations thus hinder the use of other criteria in a direct and/or secondary manner when the relevant practice is testified, which is not easy for family members to obtain evidence of family ties[7]. It is task of the Member States to verify the family

6CJEU, 11 June 2024, C-646/21, K.L, ECLI:EU:C.2024:487, not yet published.

7CJEU, see the conclusions of the Advocate General Sharpston in case of 20 June 2017, C-670/16, Mengesteab ECLI:EU:C:480, published in the electronic reports of the cases par. 69: "(…) the general principle is that the Member State which played the main role in the entry or residence of the applicant in the territory of the Union is responsible for examining an application for asylum. The criteria (…) relating to illegal entry into the territory of the Union (…) are those most frequently applied in determining the responsibility for examining an application for international protection, while those provided for in Articles 8 to 11 of Chapter III, relating to

members, their dependents and their conditions, i.e. pregnancy, maternity, mental illness, disability, advanced age, serious psychological trauma that is necessary for the relevant assistance.

The special rules for distribution and competence that are introduced to protect the fundamental rights of the person by Art. 34 of the regulation allow the family to keep other family members dependent according to art. 35, par. 2, i.e. to support other family members from the applicant.

There is nothing new in relation to unaccompanied minors. Perhaps the regulation has followed the line of case law relating to unaccompanied minors who constitute a category of vulnerable persons as well as the procedure that determines the competent state.

The relevant case law has highlighted the opportunity for family members[8] to take into consideration, when filling out the application, the Member State defined as competent. In this way, Art. 25, par. 5 of the new regulation considers the application that is registered for the first time according to the best interests of the minor[9].

An important point of reference, which started from Dublin III

minors and family unity, are used less frequently (…)".

8CJEU, 6 June 2013, C-648/11, MA/Secretary of State for the Home Department, ECLI:EU:C:2013:367, published in the electronic reports of the cases, parr. 45-49 e 61.

9CJEU, 16 July 2020, C-133/19, BMM, BS, BM, BMO, ECLI:EU:C:2020:577, published in the electronic reports of the cases, par. 44.

and is also repeated in Art. 29 of the new regulation, has to do with the issuing of the residence permit to the applicant as well as the valid entry visa. In this regard, we recall the relevant jurisprudence which has highlighted the authorization of a Member State to issue residence permits and visas according to domestic law (Thym, 2018)[10].

In other words, the Member State is competent for residence permits, visas expired, revoked, withdrawn after three years according to the current regulation and/or eighteen months according to the new regulation and even before the registration of the relative application. Thus, the period that the state that identifies as competent is responsible for the examination of the application for asylum and international protection is extended.

The criterion that has to do with the ownership of the diploma issued by an educational institution established in a Member State is connected with the application for international protection registered within six years from the delivery of the relevant qualification. Thus, art. 30 states that:

"(…) qualifications issued by educational institutions of different Member States, the responsibility for examining the application for international protection is assumed by the Member State that issued the diploma or qualification following the longest period of study or, if the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained (…)".

This is a new criterion that favors social integration and also confirms the activation of the relevant humanitarian clause that

10CJEU, 26 July 2017, C-646/16, Jafari and Jafari, ECLI:EU:C:2017:586, published in the electronic reports of the cases, par. 44.

the competent Member State requests according to art. 35, par. 2.

Another criterion that the new regulation takes into account concerns the competence of a state when the applicant goes from one Member State to another. This criterion concerns the authorization that a Member State by land, air, sea grants to the person who disembarks on its territory and is seeking assistance. The expiry of applicability of this criterion is connected with the application for international protection that is presented to another state by the one where the applicant was disembarked. This application is registered after twenty months which in the past was twelve months, after the disembarkation according to art. 33, par. 1 and 2. In this way, the principle of the state of first entry is consolidated which guarantees the universal application that the applicant crosses the border transferred to another Member State which assumes the relative responsibility.

Thus, the rule that allows the competence of a Member State that the applicant stays for five consecutive months who enters the Union irregularly through the borders of another Member State is eliminated.

The introduction of an obligation for the applicant who presents an asylum application in the state of first entry who remains in the territory that is not determined by the competence that prevents movements of a secondary nature is modified.

Therefore, there is a risk for domestic reception systems to prevent the exit from the territory of migrants in the territory of the state of first entry.

In fact, it is considered that the states assume responsibility for the applicants disembarked according to the rescue and search operation. The same line also remains for the first Member State that presents the application and that the application for protection is registered according to art. 16, par. 2.

In this case, the state guarantees and provides assistance and relief to the applicants and tries to identify the Member State the applicant requests asylum according to the criteria of established competence and the related legislation. The assumptions of the competence of a Member State fall when the interested party leaves its territory after nine months and not three as previously and is not in possession of a valid residence permit issued by the competent Member State.

What new terms are presented for the related procedures that take charge?

The new regulation seeks to highlight and regulate the procedures concerning the process of determining a Member State that is responsible. It is of central importance how the request is made. In fact, it is important to know what happens in

the case that the applicant submits the relative application for international protection for the first time to a Member State and the responsibility lies to another Member State to take that application into consideration. If the applicant submits the application, we mean the first application to a state that is being examined and is rejected, then he/she moves to another state to reiterate the relative request.

In this case, the competent state is asked to take charge of it. The procedures continue in an identifiable way to be subject to mandatory terms even after the expiry of the responsibility that examines the application on the Member State that allowed the proof of inertia.

The relative time frame ensures the speed for the verification of the relative status of the applicant which is thus stringent. The request is presented according to art. 39 within two months. According to the new regulation, three months and two from one month from the positive response expected from Eurodac with the relative data recorded through the interview by the competent state and the data coming from the VIS are needed.

According to Art. 39, par. 2, lett. 1 of the regulation 2024/1351 it is stated that:

"(…) protection has been registered after a decision to refuse entry or a decision to return has been issued (…)".

Instead, in the previous Dublin III regulation, the emergency decision, according to Art. 21, par. 2, requested the moment of arrest for irregular stay and the notification of execution for a removal order. Thus, the new regulation seeks to simplify and reduce the procedure which is carried out with shorter terms.

The motivation of the decision, according to art. 39, par. 3, is detailed and full as well as in the system that is valid and used to a form that is uniform for the relevant and circumstantial evidence. According to art. 40, par. 1 the relative deadline for the request is reduced to two months trying to reinvigorate the need to proceed relatively and without delay. Thus, the national authorities take into consideration the requests that are presented by unaccompanied minors, by family members who apply for the protection of vulnerable persons reducing in such a way the response to two weeks with the premise that all the elements concluded are positive to the data recorded by Eurodac.

In this regard, the European Commission provides and adopts implementing acts to periodically establish lists with circumstantial evidence of a relevant nature. And this is how the procedure of taking charge is simplified and involved when the relevant notification and unilateral communication of the Member State for the person present is completed and within two weeks of the positive receipt of the Eurodac. It is the

European Commission that through implementing acts uniformly regulates the preparation and submission of notifications relating to the taking back.

What happens/provides for the transfer of the applicant. What are the exceptions to the obligation?

According to Art. 42 of the new regulation the transfer procedure is part of the hypothesis that takes into consideration through the time frame of two weeks the moment of confirmation of the decision without delay to the interested party. It is a protection for the interested party who should also receive the relevant means of appeal in a simple way and in a language that he understands perfectly.

The regulatory evolution regarding the registration of the passage from Dublin III to the new regulation is influenced by the Court of Justice of the European Union. It allows the regulation to define in a broad way the exceptions and the obligation to follow the relative transfer. Par. 3 of art. 16 excludes the:

"(…) reasons to believe that, because of the transfer (…) he would run a real risk of violation of his fundamental human rights which constitutes inhuman or degrading treatment within the meaning of Article 4 of the Charter (…)".

In this statement there is the influence of jurisprudence which takes into account the inhuman, degrading treatment and the systemic shortcomings through the asylum procedure and the reception conditions of the designated Member State as a

situation which thus translates the violation of the rights of the migrant (Den Heijer, 2012; Canor, 2013)[11].

The CJEU states, in this regard, that:

"(...) in absence of serious reasons to believe that there are systemic deficiencies in the Member State responsible for examining the asylum application, the transfer of an asylum seeker (...) may be carried out only in conditions in which it is excluded that such transfer entails a real and proven risk that the person concerned will suffer inhuman or degrading treatment (...)" (De Verdelhan, 2021)[12].

In the Jawo case, the conditions that concern the migrant are extended:

"(…) due to his particular vulnerability, regardless of his will and personal choices, in a situation of extreme material deprivation (…) to meet his most basic needs such as, in particular, food, washing and accommodation, and which harm his physical or mental health or which places him in a state of degradation incompatible with human dignity (…)" (Anagnostaras, 2020; Barbou des Places, 2020)[13].

In this way, the application of the provision falls uniquely on the transfer of applicants seeking international protection and not on those entitled to protection, who have arrived in their territory of the Union, through resettlement procedures.

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11 CJEU, 21 December 2011, C-411/10 and C-493/10, N.S., ECLI:EU:C:2011:865, published in the electronic reports of the cases, par. 2: "(…) Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that Member States, including national courts, are required not to transfer an asylum seeker to the "Member State responsible" (…) Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State constitute substantial grounds for believing that the applicant runs a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision (…)".

12 CJEU, 16 February 2017, C-578/16, C. K. and others, ECLI:EU:C:2017:127, published in the electronic reports of the cases, par. 96.

13 CJEU, 19 March 2019, C-163/17, ECLI:EU:C:2019:218, published in the electronic reports of the cases, par. 92.

What are the rights and guarantees for asylum seekers and international protection?

The new regulation 2024/1351 has tried to recognize ex novo rights to applicants through the relative procedural and jurisdictional disciplinary nature. These include the right to information, legal guidance and personal interview. And it is the right to information that has tried to improve in a precise way the understanding of the relative procedure that determines the competent state.

The applicant who accepts the information to a new asylum system, according to art. 19, extends the submission of the application beyond the date of registration. Thus, the information includes one's rights, such as for example the personal interview, the effective appeal, free legal guidance, one's obligations relating to the communication of information, the presentation of identity documents and cooperation with the competent authorities.

And it is according to art. 20 that the information in this regard is:

"(…) provided in writing in a concise, transparent, intelligible and easily accessible form, using clear and plain language and in a language which the applicant understands or is reasonably supposed to understand (…)".

At this stage, the possibility for the relevant questions is required as well as the clarifications in this regard.

In this way, technological tools are spread, as well as information material that is made available online through an open and easily accessible platform for people seeking international protection. And that states can thus make use of multimedia equipment in an easy way. If the applicant is a minor, the information methods must be supported and developed by specialized personnel and provided by their representative.

According to art. 21, the right to legal assistance is recognized as an integral part of a general system that determines the competent Member State. Thus, the orientation attributes an important role in providing its migrants with the relevant effective advice and the tools that are necessary for the attribution of a role as key in providing migrants with effective, precise advice of help through necessary tools of rights to a complex and often not so precise process; as is also noted in par. 3 of the same article which states:

"(…) free legal assistance is provided by legal advisers or other advisers, admitted or authorised under national law for the purpose of providing advice, assistance or representation to applicants, or by non-governmental organisations authorised under national law to provide legal services or representation to applicants (…)".

The general recognition of the right that marks a step forward in strengthening the protection of migrants presents itself in a worrying way to the states and leaves a wide discretion to the organization of the relevant service. Thus, the legal assistance

that states provide to migrants, relating to reception guidelines, procedures and qualifications, is limited by scarce financial resources and by linguistic and cultural barriers that try to drastically hinder communication between legal professionals and migrants.

Thus, the regulation and the Member States take into consideration and implement national policies by promoting the training legal operators who establish translation services, cultural mediation as well as the related collaboration with non-governmental organizations to expand access to the service.

According to Art. 22 of the regulation, a personal interview is allowed which in a strengthened manner provides for the presence of a cultural mediator who uses technological means such as videoconferencing and audio recording.

The interview is, thus, conducted in a manner useful to facilitate the procedure for the competent state and to recognize specific guarantees to minors. The methods chosen respect their own sensitivity and in an adequate manner take into consideration the age and maturity of the applicant thus providing for the presence of a representative and/or a suitable legal advisor.

According to recital 62 it is specified that:

"(…) applicants should have the right to an effective remedy, (in order to ensure respect for private and family life, the rights of the child and protection from inhuman and degrading treatment due to a transfer) pursuant, in particular, to Article 47 of the Charter and the relevant case law of the Court of Justice of the European Union (…)".

In this spirit it is noted that art. 43 takes into account the remedies that are activated for the decision to transfer the applicant who is at risk of inhuman, degrading treatment; as well as the circumstances for the relevant decisions for the transfer that compromise the application of the regulation as well as the rights of vulnerable persons.

In this case, the relevant deadline is based and oriented from one to three weeks. And it is thus that we note that the Member States in this period are led to establish stringent deadlines to avoid appeals, as well as risks connected with the migrants who do not enjoy effective judicial protection according to what is established by Art. 47 of the Charter of the Fundamental Rights of the European Union (CFREU) (Kellerbauer, Klamert, Tomkin, 2019).

As regards the suspension and the decision for the transfer of an interested party within a reasonable time:

"(...) no later than the period provided by the Member States (...) for the appeal (...) in the current system, the suspension can be decided ex officio pending the outcome of the appeal or review, paragraph 3 of art. 43 attributes to the states the task of providing in national law that the request to suspend the implementation of the transfer decision must be formalized at the same time as the appeal (...)".

Thus the immigrant must present the relevant request.

The detention order that is issued for the risk of absconding and for reasons of national security and public order is submitted proportionally and in written form together with the legal and

factual reasons. According to Art. 45 of the new regulation 2024/1351 it is stated that:

"(...) where a person is detained, the period for submitting a request for taking charge or a notification of taking back may not exceed two weeks from the registration of the application for international protection or two weeks from the receipt of the positive response from Eurodac if no new application has been registered in the notifying Member State (...) where a person is detained at a stage subsequent to the registration of the application, the period may not be longer than one week from the detention. The requested Member State must respond within one week, after which the taking charge is deemed to have been accepted (...)".

It is specified that the administrative decision for detention is appealed before the judicial authority and/or ex officio and/or following an application by the applicant himself and/or in both ways[14].

The relevant orientation enters and is part of Art:

"(…) 47 of the Charter which provides, in the first paragraph, that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy, under the conditions laid down in that Article (...)"[15].

Thus, it is noted that the detention takes place after a reasoned decision that examines the proportionality and necessity of its nature. In the Országos case it was stated that:

"(...) in itself and does not need to be specified by provisions of Union law or national law to confer on individuals a right that can be invoked as such (…)" (Coutron, 2020; Barbou Des Places, 2021)[16].

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14 CJEU, 7 June 2016, C-155/15, Karim, ECLI:EU:C:2016:410, published in the electronic reports of the cases. 26 July 2017, C-670/16, Mengesteab, ECLI:EU:C:2017:587, published in the electronic reports of the cases, par. 48. 30 November 2023, joined cases: C-228/21, C-254/21, C-297/21, C-315/21, and C-328/21, Ministero dell'Interno (Brochure commune-Refoulement indirect), ECLI:EU:C:2023:934, published in the electronic reports of the cases.

15 CJEU, 1st August 2022, C-19/21, Staatssecretaris van Justitie en Veiligheid (Refus de prise en charge d'un mineur égyptien non accompagné), ECLI:EU:C:2022:605, published in the electronic reports of the cases.

International protection is addressed through a right and an effective remedy before a judicial body as happens with the decision of transfer and the review of the same and the decision of repatriation. It is noted that the national legislation allows the administrative authority to take into consideration the decision of a jurisdictional authority that does not allow the applicant for international protection to an effective remedy according to art. 46, par. 3 of the directive 2013/32/EU (Costello, Hancox, 2015) without taking into consideration the essential content for the right to an effective remedy that is established by Art. 47 CFREU.

Concluding remarks

Dublin III has now moved into a new orbit. It is not a sensational regulation but it only seeks to resolve the inaccuracies of the past as well as to take a step forward towards an integration, harmonization of the system in progress. The problems for asylum seekers, however, are still many. We still need serious, precise and above all internationally minded changes.

16CJEU, 14 May 2020, C-924/19 PPU and C-925/19 PPU, Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, ECLI:EU:C:2020:367, published in the electronic reports of the cases, par. 147. 29 July 2019, C-556/17, Torubarov, ECLI:EU:C:2019:626, not yet published. 19 March 2020, C-406/18, PG ECLI:EU:C:2020:216, published in the electronic reports of the cases.

We cannot ignore that the regulation has not definitively resolved the issues concerning the criteria of competence that represent a complex system in the context of migration and asylum as well as a more iron constitution that must become more precise in the near future. The support and attempts that the new regulation has offered are oriented towards the substantial links between the applicant and the competent state.

In this way, the use of the first entry state becomes residual and in compliance with what has been noted by the CJEU. Respect for the rights of people are found in the balance of distribution of burdens between the relative states. Thus, a literal interpretation of a restrictive nature prevails for the criteria and consequences for the first entry states that for geographical reasons are exposed to migratory flows.

The global approach has prospects that are better. Art. 5 of the regulation 2024/1351 grants to Member States their respective competences that promote and thus establish advantages for partnerships that have as their final objective to promote close cooperation with third countries that are interested at bilateral, multilateral, regional and international level.

We note the absence of direct provisions that identify channels of greater security for regular entry. The way is increasingly left open for an externalization of border controls entrusted to

informal tools such as simplified collaboration between police bodies and state administrative structures. For this reason, mobility partnerships on migration and mobility, agreements and memoranda are increasing in the migration sector. These are tools that the terms of flexibility and adaptability from a legal point of view create problems due to the lack of transparency. They do not guarantee respect for human rights and leave room for violations and damage to migrants.

Thus the Union and its Member States follow forms of collaboration that as can be seen do not bring the results that everyone desires. Given the technical nature of the subject, the declarations, memoranda and partnerships have not resolved a reality that puts the very form of cooperation into crisis, shifting the problem to governance issues, i.e. economic difficulties in justifying the relative limitations of asylum, international protection that definitively follows and reduces irregular arrivals on the territory of the Union.

The new regulation is based on overturning the legislation that has been going backwards for about thirty years in the field of immigration and offering greater protection rights for migrants. The discipline that is established in Art. 2 TEU does not forget the jurisprudence of the Repubblika[17] case that has prohibited

17CJEU, 20 April 2021, C-896/19, ECLI:EU:C.2021:311, not yet published, par. 63: "(…) European values, and the principle of non-regression, could (…) constitute a standard with which, in a dynamic way, to measure the quality and content of secondary legislation, but also the capacity of the institutions to operate in constant compliance with Art. 2 TEU (…)".

Member States from modifying a regulation and thus bringing greater protection for the rule of law that respects the rights that derive from the application of the treaties.

Once again the opt-out clause it has been proposed by the Dutch government to the European Commission in the asylum sector (Henley, 2024). This move seems to have a symbolic nature for the implementation of a greater need of the founding treaties that at the moment nobody is talking about it. On the other hand, Germany establishes controls relating to the borders where the period of six months that it requires is in contrast with irregular migratory flows.

This is an extensive decision for the controls that are carried out at the Austrian, Poland, Switzerland and Czech Republic borders. Germany also questions the borders with Belgium, Denmark, Luxembourg, the Netherlands. It is noted and affirmed a relative statement that the discipline of a migratory phenomenon represents once again and that puts the challenge of immigration on the part of the Union at the forefront.

The solution is not only border management but a spirit of organization, management and greater integration of the Union for the states that since their birth have followed common values that have remained consolidated to this day, often weakened by criticism because of the negative consequences that are irreversible.

And it is also true that solidarity not as a value of the past but as a current principle after the continuous crises in the migratory sector has an effective impact through a mechanism that the present regulation n. 2024/1351 establishes and affirms in a fairly precise and strong way. We must not hide the fact that the choice of a necessary, flexible mechanism that disciplines, limits, aggravates the solutions to the balance of the Member States of the Union shows that the emergencies for the external borders of the Union are still a difficult reality. Thus the principle of solidarity is proposed as a key mechanism to offer greater protection to the asylum seekers.

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